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No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of Pedro Barez, Secretary,
Department of Labor and Human Resources,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEBRUARY 2, 1981.
CERTIORARI GRANTED NOVEMBER 30, 1981.

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The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion of the U.S. District Court for the Western District of Virginia, filed April 19, 1979 and reported at 469 F. Supp. 928 (W.D.Va. 1979) A1

Opinion of the U.S. Court of Appeals for the Fourth Circuit, filed October 9, 1980 and reported at 632 F.2d 365 (4th Cir. 1980) A16

Order of the U.S. Court of Appeals for the Fourth Circuit denying petition for rehearing and suggestion for rehearing in banc, entered on December 16, 1980 ..... A27

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

January 11, 1979—Plaintiff's original complaint filed in U.S. District Court for the Western District of Virginia.

February 15, 1979—Defendants' motion to dismiss filed together with memorandum of points and authorities in support thereof.

March 2, 1979—Plaintiff's first amended complaint filed.

March 2, 1979—Plaintiff's memorandum of points and authorities in opposition to defendants' motion to dismiss filed.

March 5, 1979—Plaintiff's second amended complaint filed.

March 5, 1979—Plaintiff's supplemental memorandum of points and authorities in opposition to defendants' motion to dismiss filed.

March 9, 1979—Defendants' reply to plaintiff's memorandum of points and authorities in opposition to defendants' motion to dismiss filed.

April 19, 1979—Opinion and order granting defendants' motion to dismiss for lack of *parens patriae* standing.

May 16, 1979—Plaintiff's notice of appeal filed.

October 9, 1980—Opinion and judgment of the U.S. Court of Appeals for the Fourth Circuit reversing the district court.

October 17, 1980—Defendants' motion for extension of time to file petition for rehearing filed.

October 27, 1980—Defendants' petition for rehearing and suggestion for rehearing in banc filed.

December 16, 1980—Order of U.S. Court of Appeals for the Fourth Circuit denying defendants' petition for rehearing and suggestion for rehearing in banc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

Civil Action No. 79-0007(H)

THE COMMONWEALTH OF PUERTO RICO on the Relation of CARLOS S. QUIROS, Secretary, Department of Labor and Human Resources,

Plaintiff,

v.

ALFRED L. SNAPP & SON, INC., *et al.*,

Defendants.

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

JURISDICTION AND VENUE

1. This is a civil action to declare unlawful actions of defendants and their officers, agents and employees with respect to migrant Puerto Rican farm workers referred pursuant to clearance orders filed in the Federal Employment Service System by or on behalf of defendants. This action seeks also to permanently enjoin defendants from future violations of law respecting migrant Puerto Rican farm workers. This case arises under the Wagner-Peyser Act of 1933, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, Labor Certification Process Regulations promulgated at 20 C.F.R., Chapter V, Part 655 and Wagner-Peyser Act regulations promulgated at 20 C.F.R., Chapter V, Part 655.

2. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331 and 1337 in that the action arises under an Act of Congress regulating commerce among the States. There is now existing between the parties an actual and justiciable matter in controversy exceeding the sum or value of $10,000 exclusive of interest and costs.

3. Venue is properly situated in this District pursuant to 28 U.S.C. § 1391(b) and (c).

THE PARTIES

4. Plaintiff Carlos S. Quiros is Secretary of the Department of Labor and Human Resources (hereinafter "the Labor Department"), an agency of the executive branch of the government of the Commonwealth of Puerto Rico. As Secretary of the Labor Department, plaintiff Quiros is charged by law with direction, administration and general supervision of the Labor Department, itself charged by law to encourage and develop the interests and welfare of the laborers of Puerto Rico, to improve their working conditions and to promote their opportunities to obtain profitable employment. 3 L.P.R.A. §§ 305,306. For the month of September, 1978, overall adult unemployment on the island of Puerto Rico was 18.5%. During that same month, rural unemployment on the island of Puerto Rico was 23%. With specific reference to migrant Puerto Rican workers recruited for mainland employment through the Federal Employment Service System (hereinafter "FESS"), plaintiff Quiros is vested with authority to guarantee compliance with the conditions stipulated in the employment offer made by any employer through the said System. § 3 Pub.L.87, as amended July 13, 1978.

5. Defendant Alfred L. Snapp & Son, Inc. is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees, it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for forty-two (42) unskilled agricultural laborers to work the 1978 apple harvest.

6. Defendant Alfred L. Snapp, Sr., is president of defendant Alfred L. Snapp & Son, Inc. and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28,

1978 by Alfred L. Snapp, Jr. an employee of Alfred L. Snapp & Son. Inc.

7. Defendant John T. Watt & Son, doing business as Timber Ridge Fruit Farm is a corporation established under the laws of the Commonwealth of Virginia engaged in the business of growing, harvesting and marketing apples at orchards located at or near Gore, Virginia. Through its officers, agents and employees, it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a clearance order for fifteen (15) unskilled agricultural laborers to work the 1978 apple harvest.

8. Defendant John T. Watt is president of defendant John T. Watt & Son, doing business as Timber Ridge Fruit Farm and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

9. Defendant Orchard Management Co., Inc. is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting, and marketing apples at orchards located at or near Berryville, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for thirty-five (35) unskilled agricultural laborers to work the 1978 apple harvest.

10. Defendant Harry F. Byrd, III is president of defendant Orchard Management Co., Inc. and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

11. Defendant D.K. Russell and Sons, Inc. is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Clearbrook, Virginia. Through its officers, agents and employees it submitted a clearance order with the

Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for seventy (70) unskilled agricultural laborers to work the 1978 apple harvest.

12. Defendant J. Robert Russell is president of defendant D.K. Russell and Sons, Inc. and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

13. Defendant Whitman Orchards is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for twelve (12) unskilled agricultural laborers to work the 1978 apple harvest.

14. Defendant Gordon T. Whitman is president of defendant Whitman Orchards and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

15. Defendant Robert Boyd T/A Cloverdale Farm is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for eighteen (18) unskilled agricultural labors to work the 1978 apple harvest.

16. Defendant Robert J. Boyd is president of defendant Robert Boyd T/A Cloverdale Farm and as such is responsible for the filing of a clearance order with the

Virginia Employment Commission on or about April 28, 1978.

17. The C.L. Robinson Corp. is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for sixty (60) unskilled agricultural laborers to work the 1978 apple harvest.

18. Defendant Delmar Robinson, Jr. is president of defendant The C.L. Robinson Corp. and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

19. Defendant R & T Packing Corp. is a corporation established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for seventy (70) unskilled agricultural laborers to work the 1978 apple harvest.

20. Defendant C. Robert Solenberger is president of defendant R & T Packing Corp. and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

21. Defendant E. Blackburn Moore is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Moore

filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for thirty-five (35) unskilled agricultural laborers to work the 1978 apple harvest.

22. Defendant Fred L. and Philip B. Glaize d/b/a Crescent Orchards is a partnership established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for seventy-five (75) unskilled agricultural laborers to work the 1978 apple harvest.

23. Defendant Philip B. Glaize is a partner of defendant Crescent Orchards and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

24. Defendant Fred L. Glaize is a partner of defendant Crescent Orchards and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

25. Defendant Frederick Farms is a business entity established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for twelve (12) unskilled agricultural laborers to work the 1978 apple harvest.

26. Defendant James R. Robinson is manager of defendant Frederick Farms and as such is responsible for the filing of a clearance order with the Virginia Employ-

ment Commission, part of the FESS, on or about April 28, 1978.

27. Defendant George B. Whitacre is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 he filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for twenty (20) unskilled agricultural laborers to work the 1978 apple harvest.

28. Defendant H.F. and T.B. Byrd is a business entity established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Mt. Jackson, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for forty-eight (48) unskilled agricultural laborers to work the 1978 apple harvest.

29. Defendant John E. Crumpacker is manager of defendant H.F. and T.B. Byrd and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about June 30, 1978.

30. Defendant H.F. Byrd is upon information and belief, a part-owner of defendant H.F. & T.B. Byrd and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

31. Defendant T.B. Byrd is upon information and belief, a part-owner of defendant H.R. and T.B. Byrd and as such is responsible for the filing of a clearance order with the Virginia Employment Commission on or about April 28, 1978.

32. Defendant Harvy Brumback is a sole proprietor engaged in the business of growing, harvesting and mar-

keting apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Brumback filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for eight (8) unskilled agricultural laborers to work the 1978 apple harvest.

33. Defendant James Clevenger is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Boyce, Virginia. On or about April 28, 1978 defendant Clevenger filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for forty (40) unskilled agricultural laborers to work the 1978 apple harvest.

34. Defendant McDonald Farms is a business entity established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Stephens City, Virginia. Though its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for sixteen (16) unskilled agricultural laborers to work the 1978 apple harvest.

35. Defendant James Kenneth McDonald is a partner of defendant McDonald Farms and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

36. Defendant Messick & Beaver is a partnership established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for twenty-

three (23) unskilled agricultural laborers to work the 1978 apple harvest.

37. Defendant Albert W. Messick is a partner of defendant Messick & Beaver and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

38. Defendant James Beaver is a partner of defendant Messick & Beaver and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

39. Defendant Frank L. Snapp and Elmer G. Snapp d/b/a H.T. Snapp & Sons is a partnership established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it submitted a clearance order with the Virginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for fourteen (14) unskilled agricultural laborers to work the 1978 apple harvest.

40. Defendant Elmer G. Snapp is a partner of defendant H.T. Snapp & Sons and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

41. Defendant Frank L. Snapp is a partner of defendant H.T. Snapp & Sons and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

42. Defendant R. Roland Snapp is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Snapp filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for ten (10) unskilled agricultural laborers to work the 1978 apple harvest.

43. Defendant Robert E. Wyatt is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Berryville, Virginia. On or about April 28, 1978 defendant Wyatt filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for fifteen (15) unskilled agricultural employees to work the 1978 apple harvest.

44. Defendant Stanley Bauserman is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Stephens City, Virginia. On or about April 28, 1978 defendant Bauserman filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for eight (8) unskilled agricultural laborers to work the 1978 apple harvest.

45. Defendant Stewart Bell is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Bell filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for twelve (12) unskilled agricultural laborers to work the 1978 apple harvest.

46. Defendant Henry Brumback is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Brumback filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for forty-two (42) unskilled agricultural laborers to work the 1978 apple harvest.

47. Defendant Woodside Farm is a business entity established under the laws of the Commonwealth of Virginia and is engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. Through its officers, agents and employees it filed a clearance order with the Vir-

ginia Employment Commission, part of the FESS, on or about April 28, 1978 containing a job offer for twelve (12) unskilled agricultural laborers to work the 1978 apple harvest.

48. Defendant John W. Smith is manager of defendant Woodside Farm and as such is responsible for the filing of the clearance order with the Virginia Employment Commission on or about April 28, 1978.

49. Defendant William S. Franklin is a sole proprietor engaged in the business of growing, marketing and harvesting apples at orchards located at or near Berryville, Virginia. On or about April 28, 1978 defendant Franklin filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for nine (9) unskilled agricultural laborers to work the 1978 apple harvest.

50. Defendant Wayne McInturff is a sole proprietor engaged in the business of growing, harvesting and marketing apples at the orchards located at or near Gore, Virginia. On or about April 28, 1978 defendant McInturff filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for six (6) unskilled agricultural laborers to work the 1978 apple harvest.

51. Defendant James B. Swing is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Swing filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for fourteen (14) unskilled agricultural laborers to work the 1978 apple harvest.

52. Defendant George Cather is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Clearbrook, Virginia. On or about April 28, 1978 defendant Cather

filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for ten (10) unskilled agricultural laborers to work the 1978 apple harvest.

53. Defendant Irvin King is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located in Clarke County, Virginia and Jefferson County, West Virginia. On or about April 28, 1978 defendant King filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for twenty-seven (27) unskilled agricultural laborers to work the 1978 apple harvest.

54. Defendant Albert W. Messick is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Messick filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for twelve (12) unskilled agricultural laborers to work the 1978 apple harvest.

55. Defendant C.H. Jones Orchards is a sole proprietor engaged in the business of growing, harvesting and marketing apples at orchards located at or near Winchester, Virginia. On or about April 28, 1978 defendant Harry Rinher, manager of defendant C.H. Jones Orchards filed a clearance order with the Virginia Employment Commission, part of the FESS, containing a job offer for fourteen (14) unskilled agricultural laborers to work the 1978 apple harvest.

BACKGROUND

56. The Wagner-Peyser Act of 1933, 29 U.S.C. §§ 49 *et seq.*, established a federal-state system of employment agencies to recruit domestic workers. Pursuant to the Act, applications for workers to fill agricultural positions may be filed by employers with state employment serv-

ice agencies which process applications for workers. If workers are not available locally or within the state to fulfill the need, a so-called clearance order is sent through the interstate facilities of the Employment and Training Administration of the United States Department of Labor to other state employment agencies which may be able to fill the request.

57. The Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, regulates the admission of non-immigrant aliens into the United States. Non-immigrants may be admitted by the Attorney General to perform temporary services of labor if unemployed persons capable of performing such work cannot be found in the United States. Upon a visa petition by an employer desiring to import alien labor, the Attorney General is directed by the Act to consult with appropriate agencies of the Government. In implementation of the Attorney General's responsibilities under the Act, regulations issued by the Immigration and Naturalization Service require that an employer seeking to obtain non-immigrant visas for aliens to perform temporary labor must obtain from the Secretary of Labor a certification stating that qualified persons in the United States are not available and that employment of alien labor will not adversely affect the wages and working conditions of similarly employed workers in the United States. 8 C.F.R. § 214.2(h)(3).

58. The Secretary of Labor has issued regulations which set forth requirements and procedures applicable to requests for certification by employers seeking the services of temporary foreign workers. 20 C.F.R. Part 655, 43 Fed. Reg. 10312 *et seq.* (March 10, 1978). An employer who desires to use foreign workers for temporary agricultural employment must file a temporary labor certification application including a job offer for U.S. workers with a local office of a state employment service agency. 20 C.F.R. § 655.200(a), 43 Fed. Reg. 10313 (March 10, 1978). The Secretary's regulations

require that job offers to U.S. workers must offer at least the same benefits which the employer is offering, intends to offer or will afford, to temporary foreign workers. Similarly, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's foreign workers. 20 C.F.R. § 655.202, 43 Fed. Reg. at 10314. Further, the Secretary's regulations require that the employer filing a temporary labor certificate application shall include certain assurances, signed by the employer, including an assurance that the employer will cooperate with the employment service system in the active recruitment of U.S. workers until any foreign workers, for whom certification is subsequently granted, have departed for the employer's place of employment. 20 C.F.R. § 655.203(d), 43 Fed. Reg. at 10316. The Secretary's regulations also require an assurance by an employer seeking certification for temporary foreign workers that from the time the foreign workers depart for the employer's place of employment the employer will provide employment to any qualified U.S. worker who applies to the employer until fifty (50) percent of the period of work contract, under which the foreign worker who is in the job was hired, has elapsed. 20 C.F.R. § 655.203(e), 43 Fed. Reg. at 10316.

59. The Secretary of Labor has issued regulations under the authority of the Wagner-Peyser Act, which set forth the terms and conditions with which employers must comply if they wish to avail themselves of the services of the United States Employment Service. These regulations require that every job offer for U.S. workers, regardless of whether the employer seeks certification of foreign labor, must guarantee certain minimal benefits, wages, and working conditions, among which are the following:

> Job offers which provide for a minimum standard of housing, 20 C.F.R. § 655.202(b)(1);

Job offers which provide for furnishing all tools, supplies, and equipment to the worker without cost to the worker, 20 C.F.R. § 655.202(b)(3);

A guarantee to the worker of employment for at least three quarters of the work days of the total period for which the employment contract is in effect, 20 C.F.R. § 655.202(b)(6)(i);

Job offers which guarantee that only certain deductions from wages will be made, 20 C.F.R. § 655.202(b)(13);

A requirement that the employer keep accurate and adequate records with regard to all earnings and hours of employment, and that statements containing this information be furnished to the worker at the time he is paid, 20 C.F.R. § 655.202(b)(7)(8);

The job offer must guarantee the payment of not less than the prevalent adverse effect wage rate, 20 C.F.R. § 655.202(b)(9)(i); and

Piece rates must be designed to produce hourly earnings at least equivalent to the hourly adverse effect wage rate, 20 C.F.R. § 655.202(b)(9)(ii).

43 Fed. Reg. 10314, 10316.

FACTUAL ALLEGATIONS

60. Each year thousands of temporary farm workers are required by United States east coast apple growers to harvest apples during September and October. Many apple growers have traditionally sought to employ Jamaican workers for this purpose.

61. The Commonwealth Labor Department, through its agency the Puerto Rico Employment Service, is authorized to cooperate in the Federal Employment Service System (FESS) established under the Wagner-Peyser Act. In an effort to reduce unemployment, an attempt

was made by the Commonwealth Labor Department in 1976 to place domestic Puerto Rican workers in jobs with east coast apple growers. Despite an agreement with east coast growers to place 1,000 workers in such positions, only 613 Puerto Rican workers were actually hired by the apple growers and many were dismissed for alleged unproductivity. During 1977, only 93 workers were referred to the mainland to work the apple harvest and many of these workers were also dismissed for alleged unproductivity.

62. Apple growers in New York, Maryland, Virginia and West Virginia during 1978 took advantage of opportunities for securing seasonal labor provided by the interstate clearance system established by the Wagner-Peyser Act.

63. In consequence of the growers' decision to utilize the interstate clearance system, job offers were cleared to the Puerto Rico Employment Service on August 2, 1978. By the close of the 60-day "availability" test period on or about August 14, 1978, after less than two weeks of recruitment in Puerto Rico, the Commonwealth Department of Labor had recruited 1,094 Puerto Rican workers who were referred to regional offices of the United States Employment and Training Administration against specific growers' job orders.

64. The total number of workers called for in the job orders transmitted to Puerto Rico was 2,318; and, subsequent to August 15, 1978, the Commonwealth recruited additional workers so as to bring the total recruited to 2,318. Of this total number of 2,318 Puerto Rican workers, only 992 actually arrived on the mainland. The remainder never left Puerto Rico because of oral advice from the United States Department of Labor requesting cancellation of remaining flights because many of the defendant growers had refused to employ Puerto Rican workers who had already arrived. Of the 992 workers

who arrived at the orchards, 420 came to Virginia orchards. Of these 420 workers, fewer than 30 had employment three weeks later, the growers having refused to employ most of these workers and having dismissed most of the rest within a brief time for alleged unproductivity.

65. Upon recruitment of Puerto Rican workers, names and social security numbers were sent by telegram to the Regional Office of the United States Department of Labor for the region from which the order against which workers were being transferred had been sent. By telegrams dated August 12 through August 30, 1978 from Leandro Pena, Director, Commonwealth Bureau of Employment Security to J. Terrell Whitsitt, Regional Administrator Employment and Training Administration, United States Department of Labor, Philadelphia, the Regional Administrator was advised of the names and social security numbers of forty (40) Puerto Rican workers who had made a firm commitment to work for defendant *Alfred L. Snapp & Sons, Inc.*, fifteen (15) Puerto Rican workers who had made a firm commitment to work for defendant *John T. Watt and Son*, doing business as *Timber Ridge Fruit Farm*, thirty-three (33) Puerto Rican workers who had made a firm commitment to work for defendant *Orchard Management, Inc.*, seventy (70) Puerto Rican workers who had made a firm commitment to work for defendant *D.K. Russell and Sons, Inc.*, thirteen (13) Puerto Rican workers who had made a firm commitment to work for defendant *Whitman Orchards*, nineteen (19) Puerto Rican workers who had made a firm commitment to work for defendant *Robert Boyd T/A Cloverdale Farm*, sixty (60) Puerto Rican workers who had made a firm commitment to work for defendant *The C.L. Robinson Corp.*, seventy-two (72) Puerto Rican workers who had made a firm commitment to work for defendant *R&T Packing Co.*, thirty-five (35) Puerto Rican workers who had made a firm commitment to work for defendant *E. Blackburn Moore*, one hundred

and four (104) Puerto Rican workers who had made a firm commitment to work for defendant *Fred L. Glaize and Philip B. Glaize, doing business as Crescent Orchards*, six (6) Puerto Rican workers who had made a firm commitment to work for defendant *Frederick Farms*, twenty (20) Puerto Rican workers who had made a firm commitment to work for defendant *George B. Whitacre*, forty-eight (48) Puerto Rican workers who had made a firm commitment to work for defendant *H.F. & T.B. Byrd*, six (6) Puerto Rican workers who had made a firm commitment to work for defendant *Harvey Brumback*, forty (40) Puerto Rican workers who had made a firm commitment to work for defendant *James Clevenger*, sixteen (16) Puerto Rican workers who had made a firm commitment to work for defendant *McDonald Farms*, twenty-two (22) Puerto Rican workers who had made a firm commitment to work for defendant *Messick & Beaver*, fourteen (14) Puerto Rican workers who had made a firm commitment to work for defendant *H.T. Snapp & Son*, ten (10) Puerto Rican workers who had made a firm commitment to work for defendant *R. Roland Snapp*, fourteen (14) Puerto Rican workers who had made a firm commitment to work for defendant *Robert E. Wyatt*, seven (7) Puerto Rican workers who had made a firm commitment to work for defendant *Stanley Bauserman*, eleven (11) Puerto Rican workers who had made a firm commitment to work for defendant *Stewart Bell*, six (6) Puerto Rican workers who had made a firm commitment to work for defendant *Harvey Brumback, Woodbine Farm*, twelve (12) Puerto Rican workers who had made a firm commitment to work for defendant *Woodside Farm*, seven (7) Puerto Rican workers who had made a firm commitment to work for defendant *William S. Franklin*, six (6) Puerto Rican workers who had made a firm commitment to work for defendant *Wayne McInturff*, fourteen (14) Puerto Rican workers who had made a firm commitment to work for defendant *James B. Swing*, four (4) Puerto

Rican workers who had made a firm commitment to work for defendant *George Cather*, ten (10) Puerto Rican workers who had made a firm commitment to work for defendant *Garland R. Cather, Westview Farm*, twenty-seven (27) Puerto Rican workers who had made a firm commitment to work for defendant *Irvin R. King, Drilake Farm*, twelve (12) Puerto Rican workers who had made a firm commitment to work for defendant *Albert W. Messick*, and fourteen (14) Puerto Rican workers who had made a firm commitment to work for defendant *C.H. Jones Orchards.*

66. Enrique Gonzalez Fontanez, and other migrant Puerto Rican farm workers accepted employment from defendant *Orchard Management Co.* and defendant *Harry F. Byrd, III*, its president, pursuant to the terms of the job order filed on behalf of said defendants with the Virginia Employment Commission, on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from San Juan Airport to be available to commence work on September 5, 1978; Jose Acosta and other migrant Puerto Rican farm workers accepted employment from defendant *Robert Boyd T/A Cloverdale Farm* and *Robert J. Boyd*, its president-treasurer, pursuant to the terms of the clearance order filed on behalf of said defendants with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from San Juan Airport to be available to commence work on September 5, 1978; Ramon Velazquez Velazquez and other migrant Puerto Rican workers accepted employment from defendant *The C.L. Robinson Corp.*, and defendant *Delmar Robinson, Jr.*, its president, pursuant to the terms of the clearance order filed on behalf of said defendants with the Virginia Employment Commission. The aforesaid migrant workers were instructed to depart from San Juan Airport to be available to commence work on September 5. 1978; Jesus Rivera and other migrant Puerto Rican farm workers ac-

cepted employment from defendant *R&T Packing Corp.*, and *C. Robert Solenberger*, its president, pursuant to the terms of the clearance order filed on behalf of said defendants with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from San Juan Airport to be available to commence work on September 5, 1978; Jorge E. Mera Rivera and other migrant Puerto Rican farm workers accepted employment from defendant *George B. Whitacre*, pursuant to the terms of the job order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from San Juan Airport to be available to commence work on September 5, 1978; Jorge L. Aponte Ortiz and other migrant Puerto Rican farm workers accepted employment from defendant *R. Roland Snapp* pursuant to the terms of the clearance order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from the San Juan Airport to be available to commence work on September 5, 1978. Angel L. Ramirez Pellot and other migrant Puerto Rican farm workers accepted employment from defendant *Wayne McInturff* pursuant to the terms of the clearance order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from the San Juan Airport to be available to commence work on September 5, 1978; Rene Troche Torres and other migrant Puerto Rican farm workers accepted employment from defendant *James B. Swing* pursuant to the terms of the clearance order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from the San Juan Airport to be available to commence work on September 5, 1978; Eduardo Rivera Arroyo and other migrant Puerto Rican farm workers ac-

cepted employment from defendant *George Cather* pursuant to the terms of the clearance order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from the San Juan Airport to be available to commence work on September 5, 1978; and Juan de Jesus and other migrant Puerto Rican farm workers accepted employment from defendant *C.H. Jones Orchards* pursuant to the terms of the clearance order filed on behalf of said defendant with the Virginia Employment Commission on or about April 28, 1978. The aforesaid migrant workers were instructed to depart from the San Juan Airport to be available to commence work on September 5, 1978. As to all of the aforementioned Puerto Rican migrant workers, their departure for the mainland United States was cancelled upon oral advice by the Office of the Solicitor, United States Department of Labor, to plaintiff Quiros that certain growers had refused to employ individuals recruited by the Puerto Rican Employment Service and referred from Puerto Rico. Accordingly, these migrant workers never arrived at their intended places of employment and were not permitted to work in accordance with the terms of the clearance orders containing job offers they had accepted.

67. Miguel A. Castro and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendants *Orchard Management Co.* and *Harry F. Byrd, III*, its president, but were denied employment. Edwin Oquendo Ortega and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendants *D.K. Russell and Sons* and *J. Robert Russell*, its president, but were denied employment. Jose Rodriquez Olan and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendants *John T. Watt & Son, d/b/a Timber Ridge Fruit Farm*, and *John T. Watt, Jr.*, its manager, but were denied employment. Edwin Acevedo Caro and other migrant Puerto Rican farm workers pre-

sented themselves for employment at the orchard of defendants *Fred L. and Philip B. Glaize d/b/a Crescent Orchards, Frederick L. Glaize, Jr.*, and *Philip B. Glaize*, but were denied employment. Miquel Laboy Colon and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendant *Messick & Beaver*, but were denied employment. Mario Tirado Melendez and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendant *E. Blackburn Moore*, but were denied employment. Jesus M. Pinto Rodriquez and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendants *Alfred L. Snapp & Son, Inc.* and *Alfred L. Snapp, Sr.*, its chief officer, but were denied employment. Antonio Justiniano Irizarry and other migrant Puerto Rican farm workers presented themselves for employment at the orchard of defendant *Woodside Farm*, but were denied employment.

68. Pursuant to the terms of the clearance orders filed with the Virginia Employment Commission on behalf of defendants enumerated in paragraphs 5-55 above, as applicable, Jesus M. Pinto Rodriguez and other migrant Puerto Rican farm workers accepted employment from defendant *Alfred L. Snapp & Son, Inc.* and defendant *Alfred L. Snapp, Sr.*, its chief officer, Angel Luis Perez Irizarry and other migrant Puerto Rican farm workers accepted employment from defendant *John T. Watt & Son, d/b/a Timber Ridge Fruit Farm*, and defendant *John T. Watt, Jr.*, its manager; Catalino Lopez and other migrant Puerto Rican farm workers accepted employment from defendant *Orchard Management Co., Inc.* and defendant *Harry F. Byrd, III*, its president; Miguel Agosto Bonilla and other migrant Puerto Rican farm workers accepted employment from defendant *D.K. Russell and Sons, Inc.* and defendant *Robert Russell*, its president; Juan Velazquez and other migrant Puerto Rican farm workers accepted employment from defendant *Whitman Orchards*

and defendant *Gordon T. Whitman*, its president; Mario Tirado Melendez, and other migrant Puerto Rican farm workers accepted employment from defendant *E. Blackburn Moore*; Edwin Acevedo Caro and other migrant Puerto Rican farm workers accepted employment from defendant *Fred L. and Philip B. Glaize*, doing business as *Crescent Orchards* and defendants *Fred L. Glaize, Jr.* and *Philip B. Glaize*; Carlos M. Lopez Arroyo and other migrant Puerto Rican farm workers accepted employment from defendant *Frederick Farms* and defendant *James R. Robinson*, its manager; Ramon Ramirez Vera and other migrant Puerto Rican farm workers accepted employment from defendants *H.F. & T.B. Byrd, John E. Crumpacker*, its manager; and defendants *H.F. Byrd* and *T.B. Byrd*; Jesus Cuevas Figueroa and other migrant Puerto Rican farm workers accepted employment from defendant *Harvey Brumback*; Wilfredo Lugo Sabater and other migrant Puerto Rican farm workers accepted employment from defendant *James Clevenger*; Javier Mendez Vazquez and other migrant Puerto Rican farm workers accepted employment from defendant *McDonald Farms*; Miguel Laboy Colon and other migrant Puerto Rican farm workers accepted employment from defendant *Messick & Beaver*; Hector Rivera and other migrant Puerto Rican farm workers accepted employment from defendant *Frank L. Snapp and Elmer G. Snapp* doing business as *H.T. Snapp & Son* and defendants *Frank L. Snapp* and *Elmer G. Snapp*; Julio Medina Concepcion and other migrant Puerto Rican farm workers accepted employment from defendant *R. Roland Snapp*; Emilio Rodriquez Ortiz and other migrant Puerto Rican farm workers accepted employment from defendant *Robert E. Wyatt*; Angel M. Figueroa and other migrant Puerto Rican farm workers accepted employment from defendant *Stanley Bauserman*; Manual A. Perez Calderon and other migrant Puerto Rican farm workers accepted employment from defendant *Stewart Bell*; Juan Mariani Ortiz and other migrant Puerto Rican farm workers accepted employment from defendant *Har-*

vey Brumback, Woodbine Farm; Antonio Justiniano Irizarry and other migrant Puerto Rican farm workers accepted employment from defendant *Woodside Farm*; Efrain Cortes Concepcion and other migrant Puerto Rican farm workers accepted employment from *William S. Franklin*; Luis Alvarez Ortiz and other migrant Puerto Rican farm workers accepted employment from defendant *Wayne McInturff*; Rene Troche Torres and other migrant Puerto Rican farm workers accepted employment from defendant *James B. Swing*; Eduardo Rivera Arroyo and other migrant Puerto Rican farm workers accepted employment from defendant *George Cather*; Antonio Concepcion and other migrant Puerto Rican farm workers accepted employment from defendant *Garland R. Cather, Westview Farm*; Marcial Gonzalez Vazquez and other migrant Puerto Rican farm workers accepted employment from defendant *Irvin R. King Drilake Farm*; Celio Perez Matias and other migrant Puerto Rican farm workers accepted employment from defendant *Albert W. Messick*; and Juan de Jesus Lebron and other migrant Puerto Rican farm workers accepted employment from defendant *C.H. Jones Orchard.*

69. The employment of the aforementioned United States migrant farm workers and others at the orchards of the defendants identified in paragraph 68 above was improperly terminated prior to expiration of the contract period, and their work contracts cancelled by such defendants herein, for no stated reason, or on one or more of the following pretexts invoked by defendants herein: (a) allegedly no work available; (b) alleged inability to pick sufficient quantities of apples; (c) allegedly picked damaged fruit; (d) allegedly no social security card.

70. In addition, during the duration of their employment at the orchards of defendants herein, the aforementioned United States migrant farm workers and others were subjected by defendants and their agents and employees to one or more of the following work conditions, where Jamaicans were not subjected to such conditions:

a. Inadequate or no training;

b. Poor or unsanitary camp conditions;

c. Inadequate food;

d. Hired to pick apples but instructed to pick pears or other items (*e.g.*, peaches, weeds), or instructed to perform other types of work (*e.g.*, packing);

e. Required to pick apples that were noticeably smaller than apples Jamaicans were allowed to pick (thus, requiring longer time to fill bin);

f. Required to spot-pick after Jamaicans had been permitted to strip-pick;

g. Required to pick from top of tree after Jamaicans permitted to pick at bottom of tree;

h. Inadequate medical facilities and treatment;

i. Not fully paid for work performed;

j. Jamaicans permitted to start work at an earlier hour than Puerto Ricans;

k. Jamaicans permitted to work on Saturday and/or Sunday and Puerto Ricans were not;

l. Required to work on Sunday when did not want to for religious reasons;

m. Not given as many boxes to fill as Jamaicans;

n. Not given any, or sufficient number of, numbered stickers needed to affix to boxes after apples picked, in order to identify work product;

o. Required to fill a bin that belonged to a Jamaican; and

p. Subjected to verbal abuse or threatened to be fired.

COUNT ONE

71. Plaintiff realleges and incorporates herein by reference each and every allegation in paragraphs 1 through 67 of this complaint.

72. By failing to provide employment to qualified Puerto Rican migrant farm workers, including those workers identified in paragraphs 66 and 67 above and others, who applied for employment before expiration of fifty percent of the period of the work contract for which temporary foreign workers were hired, defendants Orchard Management Co., Harry F. Byrd, III, Robert Boyd T/A Cloverdale Farm, Robert J. Boyd, The C. L. Robinson Corp., Delmar Robinson, Jr., R&T Packing Corp., C. Robert Solenberger, George B. Whitacre, R. Roland Snapp, Wayne McInturff, James B. Swing, George Cather, C.H. Jones Orchards, D.K. Russell and Sons, J. Robert Russell, John T. Watt & Son d/b/a Timber Ridge Fruit Farm, John T. Watt, Frederick L. and Philip B. Glaize d/b/a Crescent Orchards, Frederick L. Glaize, Jr., Philip B. Glaize, Messick & Beaver, E. Blackburn Moore, Alfred L. Snapp & Son, Inc., Alfred L. Snapp, Woodside Farm and John W. Smith, and their officers, agents and employees, as applicable, have violated the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, Labor Certification Process Regulations promulgated at 20 C.F.R., Chapter V, Part 655, and Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

COUNT TWO

73. Plaintiff realleges and incorporates herein by reference each and every allegation in paragraphs 1 through 65 and 68 through 70 above.

74. By subjecting Puerto Rican migrant farm workers, including those workers identified in paragraph 68 above and others, to work conditions more burdensome than conditions established for temporary foreign workers, defendants Alfred L. Snapp & Son, Inc., Alfred L. Snapp, Sr., John T. Watt & Son d/b/a Timber Ridge Fruit Farm, John T. Watt, Jr., Orchard Management

Co., Inc., Harry F. Byrd, III, D.K. Russell and Sons, Inc., Robert Russell, Whitman Orchards, Gordon T. Whitman, E. Blackburn Moore, Fred L. and Philip B. Glaize d/b/a Crescent Orchards, Frederick L. Glaize, Jr., Philip B. Glaize, Frederick Farms, James R. Robinson, H.F. & T.B. Byrd, John E. Crumpacker, H.F. Byrd, T.B. Byrd, Harvey Brumback, James Clevenger, McDonald Farms, Messick & Beaver, Frank L. Snapp and Elmer G. Snapp d/b/a H.T. Snapp, Elmer G. Snapp, Frank L. Snapp, R. Roland Snapp, Robert E. Wyatt, Stanley Bauserman, Stewart Bell, Harvey Brumback, Woodbine Farm, Woodside Farm, John W. Smith, William S. Franklin, Wayne McInturff, James B. Swing, George Cather, Garland R. Cather, Westview Farm, Irving R. King, Drilake, Albert W. Messick and C.H. Jones Orchards and their officers, agents and employees, as applicable, have violated the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, Labor Certification Process Regulations promulgated at 20 C.F.R. Chapter V, Part 655, and Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

COUNT THREE

75. Plaintiff realleges and incorporates herein by reference each and every allegation in paragraphs 1 through 65 and 68 through 70 above.

76. By improperly terminating employment of Puerto Rican migrant farm workers, including those workers identified in paragraph 65 above and others, before expiration of their contracts, defendants Alfred L. Snapp & Son, Inc., Alfred L. Snapp, Sr., John T. Watt & Son d/b/a Timber Ridge Fruit Farm, John T. Watt, Jr., Orchard Management Co., Inc., Harry F. Byrd, III, D.K. Russell and Sons, Inc., Robert Russell, Whitman Orchards, Gordon T. Whitman, E. Blackburn Moore, Fred L. and Philip B. Glaize d/b/a Crescent Orchards, Frederick L. Glaize, Jr., Philip B. Glaize, Frederick Farms, James R. Robinson, H.F. & T.B. Byrd, John E.

Crumpacker, H.F. Byrd, T.B. Byrd, Harvey Brumback, James Clevenger, McDonald Farms, Messick & Beaver, Frank L. Snapp and Elmer G. Snapp d/b/a H.T. Snapp, Elmer G. Snapp, Frank L. Snapp, R. Roland Snapp, Robert E. Wyatt, Stanley Bauserman, Stewart Bell, Harvey Brumback, Woodbine Farm, Woodside Farm, John W. Smith, William S. Franklin, Wayne McInturff, James B. Swing, George Cather, Garland R. Carter, Westview Farm, Irvin B. King, Drilake Farm, Albert W. Messick, and C.H. Jones Orchards and their officers, agents and employees, as applicable, have breached the terms of the contracts with such workers by failing to offer employment for at least three-fourths of the workdays of the total period during which the work contract was in effect in violation of the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, Labor Certification Process Regulations promulgated at 20 C.F.R. Chapter V, Part 655, and Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

IRREPARABLE INJURY

77. In order to promote opportunities for profitable employment for Puerto Rican laborers and to reduce unemployment in the Commonwealth of Puerto Rico, plaintiff desires to recruit and refer migrant Puerto Rican farm workers agaist orders placed by defendants with the Virginia Employment Commission, part of the FESS, in 1979 and succeeding years. By their actions in improperly terminating migrant Puerto Rican farm workers, in discriminating against such workers in the terms of their employment, and in refusing to offer employment to such workers, defendants deprive the Commonwealth of Puerto Rico of its right to effectively participate in the benfits of the Federal Employment Service System of which it is a part and to serve as a supplier state for migrant farm workers in connection with a major crop. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

1. Adjudge and declare that the failure by defendants identified in paragraphs 66 and 67 above and their officers, agents and employees, as applicable, to provide employment to named migrant Puerto Rican farm workers and others constitutes a violation of the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, Labor Certification Process Regulations promulgated by the Secretary of Labor at 20 C.F.R. Chapter V, Part 655, and Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

2. Adjudge and declare that those defendants identified in paragraph 68 above and their officers, agents and employees, as applicable, by subjecting named Puerto Rican migrant farm workers and others to work conditions more burdensome than conditions established for temporary foreign workers, have violated the Wagner-Peyser Act, 29 U.S.C. §§ 49, *et seq.*, Labor Certification Process Regulations promulgated at 20 C.F.R. Chapter V, Part 655, and Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

3. Adjudge and declare that the improper termination of employment of named migrant Puerto Rican farm workers and others as set forth in paragraph 69 above, by defendants identified in paragraph 68 above, and their officers, agents and employees, as applicable, constitutes a violation of the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, the Labor Certification Process Regulations promulgated by the Secretary of Labor at 20 C.F.R., Chapter V, Part 655, and the Wagner-Peyser Act regulations at 20 C.F.R. Part 655, and that such defendants have breached the terms of their contracts with named migrant Puerto Rican farm workers.

4. Permanently enjoin the defendants and their officers, agents, employees, assigns, successors in interest, and all persons acting or claiming to act in their behalf or interests from violations of the Wagner-Peyser Act, 29 U.S.C. §§ 49 *et seq.*, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §§ 1101 *et seq.*, Labor Certification Process Regulations promulgated by the Secretary of Labor at 20 C.F.R., Chapter V, Part 655, and the Wagner-Peyser Act regulations at 20 C.F.R. Part 655.

5. Award plaintiff its costs and disbursements incurred herein, including reasonable attorney's fees, and

6. Grant plaintiff such further relief as may to the Court appear just and equitable.

Respectfully submitted,

LUIS GUINOT, JR.

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX A

(Substitute for
H.B. 457)

(No. 54)

(Approved July 13, 1978)

AN ACT

To amend Section 3 of Act No. 87 of June 22, 1962 as amended, to grant the Secretary of Labor,[1] discretional authority to exempt employers from the duties established in said Section 3, when the recruitment of workers is done through the Interstate System of the United States Employment Service; to include the provisions regarding the contracting of workers to work outside of Puerto Rico in a new Section 4; to grant the Secretary of Labor [1] discretional authority to offer technical and legal help to the laborers, in the proper forums, and to renumber Sections 4 to 11 of the Act.

STATEMENT OF MOTIVES

In order to make best use of the working opportunities, which have been traditionally provided, thousands of workers migrate to the United States to work in the growing and harvesting of agricultural crops.

Act No. 87 of June 22, 1962 as amended, as well as the predecessor, Act No. 89 of March, 1947, was conceived as an instrument for the protection of farmworkers against discrimininatory or abusive treatment by unscrupulous employers. The mechanisms provided by said Act, were designed to channel the needs and aspirations of the workers to take maximum advantage of available

[1] Was changed to Secretary of Labor and Human Resources by Act No. 100 of 1977.

job opportunities and at the same time guarantee fair and just working conditions.

According to the provisions of this Act, the employers who wish to hire workers to work outside Puerto Rico, shall execute a written contract with the persons to be employed. Such contract shall be approved by the Secretary of Labor and Human Resources, who is committed to protect the rights of the workers, under the terms of said contract, and pursuant to the basic standards established by the Secretary of Labor through Regulations.

The provisions of the Wagner-Peyser Act, approved by Congress on June 6, 1933, which apply to Puerto Rico, created a national employment system and established procedures for the recruitment and contracting of available workers in other states, through job orders for the recruitment of workers through the appropriate state agencies affiliated to the system, including Puerto Rico. The workers recruited through said system, are protected by a series of standards providing minimum working, safety and housing conditions. Pursuant to the abovementioned act, and in coordination with the rulings of the federal immigration act (The Immigration and Naturalization Act), the temporary use of foreign workers in agricultural work is permitted, after certification by the United States Secretary of Labor that domestic workers are not available.

During the past years, a substantial number of employers who traditionally recruited workers in Puerto Rico, have decided, and, as a matter of fact, have preferred to hire foreign workers instead of Puerto Ricans, alleging that the requirements and conditions established in Act No. 87 and the Regulations promulgated thereunder, have become too onerous and costly and are contrary to the provisions of the Wagner-Peyser Act.

The "availability" of Puerto Rican workers in view of the above-mentioned reasons has been questioned before the Courts. The employers' contention is shared and has been supported and sustained by the United States Secre-

tary of Labor who has certified the non-availability of Puerto Rican workers in favor of other foreign workers.

As a result of this, there has been a significant decrease in the number of migrant workers contracted. In the course of the last ten years, the number of workers hired in United States farms has dropped progressively and alarmingly. In 1967, 21,654 workers were employed in the farms, but at the end of 1977 only 4,284 workers were employed which reveals a net loss of 17,370 jobs.

At present, there is a great mass of potential workers available and willing to obtain lucrative employment. In view of this situation, it is important for reasons of public policy, to seek a solution that will allow adequate channeling of the aspirations and needs of these persons to obtain a job, without needlessly harming the workers' interest in obtaining the maximum protection available.

For this reason, it is necessary to amend Act No. 87 of June 22, 1962 as amended, so that, when migrant workers are recruited through the Interstate System of the United States Employment Service, the Secretary of Labor of the United States at his discretion, and after exhausting all available resources to negotiate a contract pursuant to the provisions of Act No. 87 and its Regulations, may relieve the employers from complying with said obligation, provided the minimum guarantees established in the federal regulations are provided, and that in every case, the Secretary of Labor shall retain supervisory authority to guarantee full compliance with the working conditions stipulated in the job offer.

It is the intention of this Act to introduce more flexibility to Act No. 87, granting the Secretary of Labor a certain degree of discretion to set aside the compliance with the provisions of the Act, when, after exhausting all efforts to negotiate a contract under said Act, they are unsuccessful, and as a result, in the judgment of the Secretary, the worker's interest in obtaining lucrative employment is adversely affected.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 3 of Act 87 of June 22, 1962 as as amended, is hereby amended to read as follows:

> "Every person, organization, or agent domiciled in or outside of Puerto Rico, who wishes to contract the services of workers in Puerto Rico to work outside of the Commonwealth, shall execute a written contract with the persons to be employed, which shall contain the minimum guarantees fixed by the Secretary of Labor [1] through Regulations, and upon its approval, the Secretary shall be committed to protect the workers' rights pursuant to the terms thereof, providing, that when the recruitment of migrant workers is performed through the Interstate System of the United States Employment Service, the Secretary, after having exhausted all efforts to negotiate a contract pursuant to this Act and the Regulations promulgated thereunder, shall, in his discretion, relieve those employers who, in his judgment, comply with the applicable federal standards and regulations from complying with said obligation. Notwithstanding the above, the Secretary shall retain supervisory authority to guarantee full compliance of the conditions stipulated in the job offer filed by any employer."

Section 2.—A new Section 4 is hereby added to Act No. 87 of June 22, 1962 as amended, to read as follows:

> "Every contract for workers to render services abroad shall be guaranteed by the person who contracts for such services, in the manner the Secretary of Labor deems convenient."

Section 3.—A new Section 5 is hereby added to Act No. 87 of June 22, 1962 as amended, to read as follows:

---

[1] Secretary of Labor and Human Resources.

"The Secretary of Labor, on his own account or by request of any workers, shall provide any technical or legal help he deems necessary to protect the rights and interests of the workers in the proper forum."

Section 4.—Section 4 of Act No. 87 as amended, is renumbered as Section 6.

Section 5.—Section 5 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 7.

Section 6.—Section 6 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 8.

Section 7.—Section 7 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 9.

Section 8.—Section 8 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 10.

Section 9.—Section 9 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 11.

Section 10.—Section 10 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 12.

Section 11.—Section 11 of Act No. 87 of June 22, 1962 as amended, is renumbered as Section 13.

Section 12.—Due to the urgency and need of this Act, it shall take effect immediately after its approval by the Governor.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

Civil Action No. 79-0007(H)

THE COMMONWEALTH OF PUERTO RICO,
ON THE RELATION OF CARLOS S. QUIROS, SECRETARY,
DEPARTMENT OF LABOR AND HUMAN RESOURCES,
Plaintiff

v.

ALFRED L. SNAPP & SON, INC., *et al.*,
Defendants.

By: James C. Turk, Chief, U.S. District Judge

ORDER

In accordance with the memorandum opinion this day filed, it is ADJUDGED and ORDERED that defendants' motion to dismiss be, and the same hereby is granted, and the action is dismissed with prejudice and stricken from the docket of the Court.

ENTER: This 17th day of April, 1979.

/s/ James C. Turk
Chief U.S. District Judge